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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 SON KIM,

8 Plaintiff,

9 v.

10 MARTHA KERR and SGT. MILLER,

11 Defendants.

No. C11-5788 RJB/KLS

REPORT AND RECOMMENDATION
Noted For: November 18, 2011

12 This civil rights action has been referred to United States Magistrate Judge Karen L.
13 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
14 the motion of Plaintiff Son Kim seeking dismissal of this civil action. ECF No. 3. Plaintiff has
15 not filed a complaint and his application to proceed *informa pauperis* (IFP) is pending. ECF
16 No. 1. Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule
17 41(a)(1) of the Federal Rules of Civil Procedure.
18

19 **DISCUSSION**

20 On September 27, 2011, Plaintiff Son Kim filed a motion for leave to proceed IFP. ECF
21 No. 1. On September 28, 2011, the Clerk sent a letter to Plaintiff advising that Plaintiff had
22 failed to file a complaint, service copies and addresses for service of a complaint on the named
23 defendants. ECF No. 2. Plaintiff was directed to correct the deficiencies in his filing by October
24 28, 2011. *Id.* On October 26, 2011, Plaintiff filed his motion for voluntary dismissal. ECF No.
25 3.
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Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

ORDER - 1

1 [T]he plaintiff may dismiss an action without a court order by filing (i) a notice of
2 dismissal before the opposing party serves either an answer or a motion for
summary judgment....

3 As noted above, a complaint has not yet been filed in this action. The undersigned
4 recommends that the Court dismiss this action without prejudice.

5 **CONCLUSION**

6 The Court should dismiss this action without prejudice.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
8 Procedure, the parties shall have fourteen (14) days from service of this Report and
9 Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections
10 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
11 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
12 matter for consideration on **November 18, 2011**, as noted in the caption.
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15 **DATED** this 3rd day of November, 2011.

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19 Karen L. Strombom
20 United States Magistrate Judge
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